

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jonathan Cioschi	Team: Team # 8	CCRB Case #: 200910434	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 07/06/2009 1:50 PM	Location of Incident: 48th Precinct Stationhouse	Precinct: 48	18 Mo. SOL 1/6/2011	EO SOL 1/6/2011	
Date/Time CV Reported Mon, 07/06/2009 3:09 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Mon, 07/06/2009 3:09 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Oliva Carvajalhernandez	20401	938182	048 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Jessica Pabon	04234	921841	048 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Oliva Carvajalhernandez	Discourtesy: PO Oliva Carvajal-Hernandez spoke obscenely to § 87(2)(b)	

Case Summary

On July 6, 2009, § 87(2)(b) filed a complaint in person at the 48th Precinct stationhouse (encl. 4a-4b).

On July 6, 2009, at approximately 12:00 PM, accompanied by her friend § 87(2)(b) § 87(2)(b) traveled to the 48th Precinct stationhouse to serve an order of protection. At the stationhouse, § 87(2)(b) requested that PO Carvajal-Hernandez help her serve the order of protection, and a verbal argument ensued. The following allegation resulted:

- **Allegation A – Discourtesy:** PO Carvajal-Hernandez spoke obscenely to § 87(2)(b) § 87(2)(g)

Results of Investigation

Civilian Statements

Complainant: § 87(2)(b)

- § 87(2)(b) -old Hispanic female, 5'1", 142 pounds, black hair, brown eyes. § 87(2)(b) was pregnant at the time of the incident.

§ 87(2)(b) was interviewed by the CCRB on July 20, 2009 (encl. 7a-7d). On July 6, 2009, at approximately 12:00 PM, accompanied by her housemate § 87(2)(b) § 87(2)(b) left the § 87(2)(b) and traveled to the 48th Precinct Stationhouse in the Bronx to have an officer serve an order of protection on her batterer. When she arrived at the stationhouse, § 87(2)(b) approached the front desk. An officer, identified through the investigation as PO Oliva Carvajal-Hernandez, walked over to § 87(2)(b) § 87(2)(b) told PO Carvajal-Hernandez that she needed to serve an order of protection. PO Carvajal-Hernandez told § 87(2)(b) that she needed to wait because no officers who could serve the order were present at the moment. § 87(2)(b) sat down with § 87(2)(b) in the bench area just to the right of the entrance and waited there for over an hour. While § 87(2)(b) was waiting, no one approached her, and she did not move from her seat.

§ 87(2)(b) approached PO Carvajal-Hernandez once more and asked her how long she would have to wait to serve the order of protection. After telling § 87(2)(b) that she would have to wait, PO Carvajal-Hernandez turned away from § 87(2)(b) flung her right hand back over her right shoulder, and referred to § 87(2)(b) as, 'This fucking bitch' (**Allegation A**). In response, § 87(2)(b) § 87(2)(b) told PO Carvajal-Hernandez that § 87(2)(b) was stressed out and high risk, partially because she was pregnant. PO Carvajal-Hernandez did not reply and returned to her desk. Still standing in front of the desk, § 87(2)(b) said to another officer, identified through the investigation as Sgt. Jessica Pabón, who was standing in the back near a desk, 'That lady called me a fucking bitch' and asked her for PO Carvajal-Hernandez's name. Sgt. Pabón did not respond.

§ 87(2)(b) exited the stationhouse and walked to the sidewalk in front of the stationhouse, where she told another officer, identified through the investigation as Lt. Idalia Santos of Patrol Borough Bronx, that she wanted to file a complaint about PO Carvajal-Hernandez's behavior. Lt. Santos entered the stationhouse with § 87(2)(b) and helped her file a complaint. After waiting some

time for the complaint to be typed, § 87(2)(b) left the stationhouse because she had to pick up her children, and Lt. Santos told § 87(2)(b) that a copy would be sent to her via mail. § 87(2)(b) departed.

As § 87(2)(b) said she was planning on retaining an attorney to file a civil suit for the incident, the investigator neither described nor offered mediation. The investigator offered mediation to

§ 87(2)(b) § 87(2)(b)

Witness: § 87(2)(b)

- *Hispanic female acquaintance of § 87(2)(b) who, at the time of the incident, § 87(2)(b)*

§ 87(2)(b) provided a telephone statement in Spanish on August 3, 2009 (encl. 8a). On July 6, 2009, § 87(2)(b) traveled with § 87(2)(b) who was pregnant at the time, to the 48th Precinct stationhouse to help her serve an order of protection. § 87(2)(b) spoke with PO Carvajal-Hernandez to attempt to have it served. PO Carvajal-Hernandez said that it could not be served at that time because there was no one available to help her. PO Carvajal-Hernandez told § 87(2)(b) that she needed to return another time to have it served, and § 87(2)(b) refused because she feared for her safety. In her own unprompted description of the events, § 87(2)(b) stated that PO Carvajal-Hernandez approached § 87(2)(b) and called her a ‘fucking bitch’ (**Allegation A**). Though § 87(2)(b) could not understand parts of the conversation because her primary language is Spanish, § 87(2)(b) asserted that PO Carvajal-Hernandez was speaking with an “attitude.” In reply, § 87(2)(b) who had been behaving respectfully with PO Carvajal-Hernandez, told PO Carvajal-Hernandez that she could not return at a later date to serve the order because her life was in danger. § 87(2)(b) told PO Carvajal-Hernandez that she had § 87(2)(b) and that PO Carvajal-Hernandez’s behavior constituted abuse. § 87(2)(b) told PO Carvajal-Hernandez that she would report her behavior. § 87(2)(b) did not speak with PO Carvajal-Hernandez.

NYPD Statements:

Subject Officer: PO OLIVA CARVAJAL-HERNANDEZ

- § 87(2)(b) -old Hispanic female, 5’8” tall, 148 pounds, black hair, black eyes
- *On July 6, 2009, PO Carvajal-Hernandez worked from 0705 to 1640 on T/S duty in plainclothes. PO Carvajal-Hernandez was on restricted duty due to her pregnancy.*

On January 21, 2010, PO Carvajal-Hernandez was interviewed at the CCRB (encl. 9a-9b). She recalled § 87(2)(b) whom she recognized in the photograph shown to her by the investigator, appearing at the stationhouse and asking her to serve an order of protection. At the time, PO Carvajal-Hernandez was busy servicing approximately ten complainants, and there were no available radio motor patrol vehicles to serve § 87(2)(b) order. When PO Carvajal-Hernandez informed § 87(2)(b) of this, § 87(2)(b) “became very belligerent” by yelling, cursing, stating that she did not feel safe and needed to be taken care of first, and waved her arms. PO Carvajal-Hernandez informed her that she would need to wait, and § 87(2)(b) continued being “very belligerent” in this manner, stating that she did not feel safe and that the order needed to be served immediately. PO Carvajal-Hernandez informed her that she could either wait or get something to eat and come back later, when she would have a vehicle ready to serve the order. § 87(2)(b) cursed at her and threw her order of protection on a desk in the front of the

stationhouse. PO Carvajal-Hernandez raised her voice and said, 'If you can't wait, you'll have to come back either later or tomorrow.'

PO Carvajal-Hernandez did not recall Sgt. Pabón, who was working as desk sergeant, interrupting her interaction with § 87(2)(b) to instruct her to take lunch, nor did she recall, after viewing the roll call, if any other officers were present. When asked if she directed any profanity towards § 87(2)(b) if she used any profanity in her presence; or if she said 'fucking bitch' to § 87(2)(b) PO Carvajal-Hernandez said she did not recall. When asked if any other officer directed profanity towards or said any profanity in the presence of § 87(2)(b) PO Carvajal-Hernandez said she did not recall. PO Carvajal-Hernandez was not sure how far she was from Sgt. Pabón during the incident, as she was quite preoccupied.

Witness Officer: SGT. JESSICA PABÓN

- § 87(2)(b) -old Hispanic female, 130 pounds, brown hair, brown eyes.
- On July 6, 2009, Sgt. Pabón worked in uniform from 0600-1457 as desk sergeant.

On January 20, 2010, Sgt. Jessica Pabón was interviewed at the CCRB (encl. 12a-12b). She was working with PO Caravajal-Hernandez, who was working in plainclothes as the T/S operator. That day, there was a lot going on at the stationhouse, and Sgt. Pabón was dealing with a number of prisoners. From approximately eight feet away, Sgt. Pabón heard "raised voices" and observed PO Caravajal-Hernandez arguing with § 87(2)(b) but she could not hear what they were saying. Sgt. Pabón did not recall hearing them discuss an order of protection, and she did not hear PO Caravajal-Hernandez direct any profanity towards § 87(2)(b) or call her a 'fucking bitch' or say the words 'fucking bitch' in her presence. Attempting to prevent an altercation between PO Carvajal-Hernandez, who was pregnant, and § 87(2)(b) Sgt. Pabón ordered her to take her lunch and resumed desk duty.

Lt. Santos informed Sgt. Pabon that § 87(2)(b) had made a CCRB complaint to her, and she instructed Sgt. Pabon to call it in to CCRB and make an entry about it in the Command Log, which she did (encls. 4a & 11a). Sgt. Pabon never spoke with § 87(2)(b) and, therefore never directed any profanity toward her. Sgt. Pabon did not hear any other officers direct profanity at § 87(2)(b) Sgt. Pabon was not sure how Lt. Santos identified PO Caravajal-Hernandez as the subject officer, and she was not certain if Lt. Santos was present when § 87(2)(b) and PO Caravajal-Hernandez argued. The investigator presented Sgt. Pabón with the roll call to see if she could identify other officers or employees who were present at the time of the incident, and she said that, to her recollection, she was the only officer in the vicinity.

Status of Civil Proceedings

- As of January 6, 2010, § 87(2)(b) has not filed a Notice of Claim with the City of New York with regard to the incident (encl. 14a).

Civilian Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]

Civilian CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 2a).

Subject Officer CCRB History

- PO Carvajal-Hernandez has been a member of the service for four years. In CCRB case number 200810322, a refusal to provide name/shield number allegation was substantiated against her, and she received instructions as discipline (encl. 3a).

Conclusion

Identification of Subject Officer

- PO Carvajal-Hernandez admitted to interacting with § 87(2)(b)

Investigative Findings and Recommendations

Allegation A – Discourtesy: PO Carvajal-Hernandez spoke obscenely to § 87(2)(b)

As noted, § 87(2)(b) who provided consistent accounts of the incident, alleged that PO Carvajal-Hernandez directed the following profanity toward her: ‘fucking bitch.’ § 87(2)(b) has not filed a notice of claim. Additionally, § 87(2)(b) corroborated § 87(2)(b) account of the discourteous remark verbatim. Although she almost exclusively speaks Spanish, § 87(2)(b) volunteered this phrase when asked to describe the interaction between § 87(2)(b) and PO Carvajal-Hernandez.

PO Carvajal-Hernandez provided very detailed testimony about her conversation with § 87(2)(b) in which she thoroughly described statements she made and § 87(2)(b) behavior. Nonetheless, PO Carvajal-Hernandez allegedly did not recall if she directed profanity towards § 87(2)(b) or said ‘fucking bitch’ to her or in her presence. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

According to Patrol Guide 203-09(2), members of the service must act in a manner that is courteous and respectful (encl. 1a). Indeed, they must always conduct themselves in a manner which engenders respect for the Department, especially while on duty, and they must also always maintain self-control, as articulated in Police Department v. Howard, Disciplinary Case No. 78255/02 at 11, June 2003 (encl. 13a). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Team: _____ :

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date